

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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CHARLES THOMAS, on behalf of himself
and all others similarly situated,

Plaintiff,
-against-

ORDER
CV 11-5844 (MKB)(ETB)

CONTINENTAL SERVICE GROUP, INC.,

Defendant.

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In resetting oral argument at the telephone conference today, the Court was under the impression that the plaintiff's present motion for sanctions, dated January 4, 2013, is a contested one. It is not. No opposition has been filed. Nor did the defendant, Continental Service Group, Inc., contest the underlying motion to compel, dated November 27, 2012, which gives rise to the present application.

For the foregoing reasons, the plaintiff's motion, dated January 4, 2013, is granted without any opposition. The defendant has had two months to respond to a letter motion¹ and has failed to do so. The Court notes, however, that the plaintiff's motion has been modified to delete the lack of verification of defendant's interrogatories issue and also to reflect withdrawal of the bona fide error defense, which defendant had refused to divulge. (See Correspondence of plaintiff's counsel, Joseph Mauro, dated Jan. 8, 2013.) I further note that, although the instant motion requests a court-ordered subpoena, as discussed at the conference held on January 16, 2013, plaintiff's counsel, as an attorney authorized to practice before the court, is fully

¹ Pursuant to Rule 37.3(c) of the Local Civil Rules a response must be filed "within four days."

authorized to issue same and should do so. See Fed. R. Civ. P. 45(a)(3)(A). Any failure to comply with the subpoena may be enforced before the undersigned.

Accordingly, the defendant shall comply forthwith with the “Financial Documents” and “Bookkeeping” document demands, which are the subject of the present unopposed motion and which should have been produced pursuant to the unopposed underlying motion dated November 27, 2012 (directing “production within 10 days”). (See Order dated Dec. 7, 2012.) Sanctions against the defendant accrue, as requested, at the rate of \$750.00 per day, calculated from the date of this Order until full compliance. In addition, plaintiff is granted the costs of this application, including reasonable attorney’s fees. Application for same shall be made within fourteen (14) days, by affidavit and on notice to defendant, who is granted ten (10) days to respond.

The oral argument scheduled for March 8, 2013 at 2:00 p.m. is canceled. The final conference is July 11, 2013 at 1:30 p.m. by telephone. Plaintiff’s counsel is directed to initiate the conference call and have all parties on the line before connecting the court (631-712-5710). The call must be placed through the teleconference operator provided by your long-distance service. All counsel must participate. A pre-trial order consistent with Judge Brodie’s rules shall be filed no later than June 28, 2013.

No request for adjournment will be considered unless made at least forty-eight (48) hours before the scheduled conference. All requests should be in writing, on consent of all parties, and contain at least two (2) adjourned dates on which all parties are available. In the absence of consent, an explanation of counsel’s efforts to obtain agreement should be stated. All requests for adjournments should be sent to chambers via ECF on notice to all parties.

SO ORDERED:

Dated: Central Islip, New York
March 6, 2013

/s/ E. Thomas Boyle
E. THOMAS BOYLE
United States Magistrate Judge